

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**THOMAS CORCORAN**, Complainant,

vs.

**STATE OF WISCONSIN,**  
**DEPARTMENT OF CORRECTIONS**, Respondent.

Case 680  
No. 65137  
PP(S)-362

**Decision No. 31570-D**

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**Appearances:**

**Kurt C. Kobelt**, Lawton & Cates, S.C., Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of the Complainant Thomas Corcoran.

**David J. Vergeront**, Chief Legal Counsel, Office of State Employment Relations, State of Wisconsin, 101 East Wilson Street, 4<sup>th</sup> Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondent State of Wisconsin, Department of Corrections.

**ORDER ON REVIEW OF EXAMINER'S DECISION**

On June 24, 2008, Wisconsin Employment Relations Commission Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order in the above matter wherein he concluded that Respondent State of Wisconsin/Department of Corrections had not committed any unfair labor practice beyond that already found by the Wisconsin Employment Relations Commission in STATE OF WISCONSIN, DEC. No. 31272-B (WERC, 9/07). As to that previously found unfair labor practice, the Examiner incorporated the Commission's Findings of Fact, Conclusions of Law and Order from DEC. NO. 31272-B.

On July 14, 2008, Complainant Corcoran timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats.

Dec. No. 31570-D

On November 4, 2008, the Commission denied Respondent's motion to dismiss the petition.

The parties thereafter filed written argument in support of and in opposition to the petition -- the last of which was received on November 28, 2008.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

1. The Examiner's Findings of Fact are affirmed.
2. The Examiner's Conclusions of Law 1-4 are affirmed.
3. The Examiner's Conclusion of Law 5 is set aside.
4. The Examiner's Conclusion of Law 6 is re-numbered as Conclusion of Law 5 and affirmed.
5. The Examiner's Order is set aside and the following Order is made:

The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 30<sup>th</sup> day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**State of Wisconsin (Department of Corrections)**

**MEMORANDUM ACCOMPANYING ORDER**  
**ON REVIEW OF EXAMINER'S DECISION**

In his petition for review as narrowed by supportive argument, Complainant only takes issue with the wording of the Notice the Examiner ordered posted by Respondent. Complainant asks that the text be modified to remove his name and replace it with a generic reference to the Local 2748 President.

Respondent opposes the change as being at odds with the scope of the matter litigated by the parties and decided by the Examiner. Respondent further argues that, in any event, the notice-posting obligation should be set aside because the Examiner did not find any new unfair labor practices and the Notice in question has already been posted as a remedy pursuant to DEC. NO. 31272-B.

As the text of the Examiner's decision reflects, he did not find that Respondent committed any unfair labor practice independent of that already found and remedied by the Commission in DEC. NO. 31272-B. However, because the record in DEC. NO. 31272-B became part of the Examiner's record, he chose to incorporate DEC. NO. 31272-B into his decision -- including the obligation to post the Notice now in dispute. In this unique context, we conclude it is appropriate to set aside the Examiner's Conclusion of Law finding that Respondent had committed an unfair labor practice (in which he simply repeats our Conclusion of Law from DEC. NO. 31272-B) and to alter his Order to dismiss the complaint inasmuch as he found no violations independent of that already found and remedied by the Commission in DEC. NO. 31272-B.

Having modified the Examiner's Order to dismiss the complaint, we have thereby ended the requirement that a Notice be posted and thus need not resolve the dispute about the content thereof. We have affirmed the remainder of the Examiner's decision as being fully supported by the record.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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